

RETURN DATE: OCTOBER 22, 2019 :
ROGER MISBACH, :
ELLEN MISBACH and :
LIBERTARIAN PARTY OF CONNECTICUT

SUPERIOR COURT
J.D. OF HARTFORD

vs

AT HARTFORD

DENISE MERRIL, SECRETARY :
OF STATE

OCTOBER 3, 2019

VERIFIED COMPLAINT

COUNT ONE: WRIT OF MANDAMUS

1. Plaintiff Roger Misbach is a candidate for Mayor of Meriden, Connecticut. He was a placeholder candidate for the purposes of getting a petition issued for the office of City Council Area 1, and without a placeholder candidate prior to the final nomination of the Libertarian Party being made, and the deadline for submitting petition signatures being prior to nomination, it was necessary to run the Plaintiff as a placeholder to secure ballot access.

2. Plaintiff Ellen Misbach is a candidate for City Council in Meriden. She was a placeholder candidate for the purposes of getting a petition issued for the office of Mayor, and without a placeholder candidate prior to the final nomination of the Libertarian Party being made, and the deadline for submitting petition signatures being prior to nomination, it was necessary to run the Plaintiff as a placeholder to secure ballot access.

3. Plaintiff Libertarian Party of Connecticut is a statewide recognized minor party in Connecticut pursuant to CGS §9-372(6).

4. The Defendant caused petitions for the respective offices to be issued, which

the Defendant did cause to issue pursuant to CGS §§9-453 through 9-453u, inclusive.

5. The Libertarian Party of Connecticut has, on numerous occasions, as have other minor parties, 'placeholder' candidates for petitioning purposes when the final nominee has yet to be determined. The election laws of this State are such that petition drives must be initiated as soon as possible due to the amount of time and resources involved, usually prior to when the final nominee is not yet known, and many times before the deadline on which ballot petitions may be completed. The deadline to complete ballot petitioning was August 7, 2019.

6. The Plaintiffs turned in a sufficient number of signatures to qualify for the November 2019 ballot under the Party Designation "Libertarian".

7. The Defendant or her agent/designee caused a letter to issue stating the Secretary of State's final decision to place Plaintiffs Roger Misbach and Ellen Misbach on the November 2019 ballot in the municipal election, but for the offices under which petitions were issued, and not for the final offices for which nominations were made.

8. The Libertarian Party of Connecticut formally nominated Roger Misbach for Mayor of Meriden and Ellen Misbach for City Council, and delivered to the Secretary of State and the City Clerk of Meriden timely, on September 3, 2019, via guaranteed overnight delivery global express mail with guaranteed delivery by September 4, 2019, before noon, pursuant to CGS §9-452. Said letter arrived timely and was received by 4PM on September 4, 2019, the deadline on which for the Libertarian Party to have nominated municipal candidates.

9. The Defendant, on September 18, 2019, issued a letter rescinding all ballot

access for the races of City Council Area 1 and Mayor in Meriden, and denying the Libertarian Party of Connecticut the ballot access for which it had petitioned and submitted a more than adequate number of qualifying signatures as required by CGS §9-379.

10. The Plaintiffs have no adequate remedy at law, and are owed a ministerial duty by the Defendant to be placed on the ballot, which she has wilfully neglected and failed to perform or caused to have been performed. Absent the granting of a writ of mandamus, the Plaintiffs will be irreparably harmed by not appearing on the November 2019 ballot in Meriden for Mayor and City Council Area 1.

11. There is no other specific adequate remedy for the Defendant's failure to perform her ministerial duties in advance of the November 2019 general election, and that failure will disenfranchise the voters of Meriden and the Libertarian Party of Connecticut.

WHEREFORE, the Plaintiffs seek:

- A. Costs
- B. A writ of mandamus restoring the Libertarian Party and its candidates to the ballot for Mayor and City Council Area 1
- C. Other relief the Court deems appropriate to satisfy the ends of justice.

**COUNT TWO: COUNT TWO: DEPRIVATION OF RIGHTS UNDER COLOR OF LAW,
42 USC §1983 (DENIAL OF DUE PROCESS)**

1. Plaintiff Roger Misbach is a candidate for Mayor of Meriden, Connecticut. He was a placeholder candidate for the purposes of getting a petition issued for the office

of City Council Area 1, and without a placeholder candidate prior to the final nomination of the Libertarian Party being made, and the deadline for submitting petition signatures being prior to nomination, it was necessary to run the Plaintiff as a placeholder to secure ballot access.

2. Plaintiff Ellen Misbach is a candidate for City Council in Meriden. She was a placeholder candidate for the purposes of getting a petition issued for the office of Mayor, and without a placeholder candidate prior to the final nomination of the Libertarian Party being made, and the deadline for submitting petition signatures being prior to nomination, it was necessary to run the Plaintiff as a placeholder to secure ballot access.

3. Plaintiff Libertarian Party of Connecticut is a statewide recognized minor party in Connecticut pursuant to CGS §9-372(6).

4. The Defendant caused petitions for the respective offices to be issued, which the Defendant did cause to issue pursuant to CGS §§9-453 through 9-453u, inclusive ("Petitioning Laws").

5. The Libertarian Party of Connecticut has, on numerous occasions, as have other minor parties, 'placeholder' candidates for petitioning purposes when the final nominee has yet to be determined. The election laws of this State are such that petition drives must be initiated as soon as possible due to the amount of time and resources involved, usually prior to when the final nominee is not yet known, and many times before the deadline on which ballot petitions may be completed. The deadline to complete ballot petitioning was August 7, 2019.

6. The Plaintiffs turned in a sufficient number of signatures to qualify for the November 2019 ballot under the Party Designation "Libertarian", as they repeatedly have for other elections seasons for many other offices.

7. The Defendant or her agent/designee caused a letter to issue stating the Secretary of State's final decision to place Plaintiffs Roger Misbach and Ellen Misbach on the November 2019 ballot in the municipal election, but for the offices under which petitions were issued, and not for the final offices for which nominations were made.

8. The Libertarian Party of Connecticut formally nominated Roger Misbach for Mayor of Meriden and Ellen Misbach for City Council, and delivered to the Secretary of State and the City Clerk of Meriden timely, on September 3, 2019, via guaranteed overnight delivery global express mail with guaranteed delivery by September 4, 2019, before noon, pursuant to CGS §9-452. Said letter arrived timely and was received by 4PM on September 4, 2019, the deadline on which for the Libertarian Party to have nominated municipal candidates.

9. The Defendant's custom, habit and practice has been to withhold an official determination as to whether minor party and petitioning candidates have qualified for or will actually appear on the ballot until after the deadline of minor parties to nominate set by CGS §9-452. This leaves an inadequate amount of time for any deficiencies or inadequacies to be addressed in the event nominations occur much sooner, forcing minor parties and their candidates into a position where no functional redress of unfair denial of ballot access can be had, as was the case with Bob Barr in 2008 when the Libertarian Party of Connecticut proved then Secretary of State Bysciewicz unjustly

disqualified too many signatures, but the Federal District Court ruled that October 23 was too late to place him on the ballot due to the impossibility of the task.

10. Virtually all minor party candidates do not receive formal notice from the Defendant's office until the second week of September that they will or will not appear on the ballot in the November election of any given year – even if they have obtained enough votes and are not required to circulate a petition. This leaves no practical opportunity for any recourse or corrective action prior to the deadline imposed by CGS §9-452, and thus operates to deprive minor parties such due process of law otherwise afforded to them by the Uniform Administrative Procedure Act as set forth in CGS §§4-166 through 4-189, inclusive, wherein they might otherwise seek a hearing in a contested case per §4-177 or prosecute the same utilizing the tools, methods and procedures set forth in CGS §§4-177a, 4-177b and 4-177c. In a case where the Secretary of State's office has, in the past, been made known of a nominee by virtue of the Petitioning Laws well before 90 days prior to the deadline set forth in CGS §9-452 (and especially others who do not require a petition), it has failed to "...proceed with reasonable dispatch to conclude any matter pending before it..." for the purposes of CGS §4-180.

WHEREFORE, the Plaintiff claim:

A. Injunctive relief under 42 USC §1983 that the Petitioning Laws not be used to prevent the Libertarian Party's candidates from appearing on the ballot who have been not afforded a contested case hearing under CGS §4-177 or who have not been given advance notice by the Defendant that they will not be appearing on the ballot prior to

September 4, 2019;

B. Declaratory relief under 42 USC §1983 that the Defendant violated the Plaintiffs' Constitutional rights to due process in removing Roger Misbach and Ellen Misbach from the November 2019 ballot in the City of Meriden.

C. Damages

D. Costs and Attorney Fees

E. Other relief the Court deems proper

COUNT THREE: DEPRIVATION OF RIGHTS UNDER COLOR OF LAW, 42 USC §1983 (DENIAL OF EQUAL PROTECTION UNDER THE LAW)

1. Plaintiff Roger Misbach is a candidate for Mayor of Meriden, Connecticut. He was a placeholder candidate for the purposes of getting a petition issued for the office of City Council Area 1, and without a placeholder candidate prior to the final nomination of the Libertarian Party being made, and the deadline for submitting petition signatures being prior to nomination, it was necessary to run the Plaintiff as a placeholder to secure ballot access.

2. Plaintiff Ellen Misbach is a candidate for City Council in Meriden. She was a placeholder candidate for the purposes of getting a petition issued for the office of Mayor, and without a placeholder candidate prior to the final nomination of the Libertarian Party being made, and the deadline for submitting petition signatures being prior to nomination, it was necessary to run the Plaintiff as a placeholder to secure ballot access.

3. Plaintiff Libertarian Party of Connecticut is a statewide recognized minor

party in Connecticut pursuant to CGS §9-372(6).

4. The Defendant caused petitions for the respective offices to be issued, which the Defendant did cause to issue pursuant to CGS §§9-453 through 9-453u, inclusive ("Petitioning Laws").

5. The Libertarian Party of Connecticut has, on numerous occasions, as have other minor parties, 'placeholder' candidates for petitioning purposes when the final nominee has yet to be determined. The election laws of this State are such that petition drives must be initiated as soon as possible due to the amount of time and resources involved, usually prior to when the final nominee is not yet known, and many times before the deadline on which ballot petitions may be completed. The deadline to complete ballot petitioning was August 7, 2019.

6. The Plaintiffs turned in a sufficient number of signatures to qualify for the November 2019 ballot under the Party Designation "Libertarian", as they repeatedly have for other elections seasons for many other offices.

7. The Defendant or her agent/designee caused a letter to issue stating the Secretary of State's final decision to place Plaintiffs Roger Misbach and Ellen Misbach on the November 2019 ballot in the municipal election, but for the offices under which petitions were issued, and not for the final offices for which nominations were made.

8. The Libertarian Party of Connecticut formally nominated Roger Misbach for Mayor of Meriden and Ellen Misbach for City Council, and delivered to the Secretary of State and the City Clerk of Meriden timely, on September 3, 2019, via guaranteed overnight delivery global express mail with guaranteed delivery by September 4, 2019,

before noon, pursuant to CGS §9-452. Said letter arrived timely and was received by 4PM on September 4, 2019, the deadline on which for the Libertarian Party to have nominated municipal candidates.

9. The process under which the Petitioning Laws create an undue, oppressive, arbitrary, capricious and outright unconstitutional burden on both the Plaintiffs and the public at large in the following ways not reasonably connected with the state's interest in regulating the ballot:

- a. They have been utilized by the Defendant to delay and deny recognition of Libertarians organizing locally as a political party, which would help facilitate party growth, funding and other activities the Democratic and Republican Parties enjoy. Instead, the State has, on numerous occasion, returned forms and filings of would be Libertarian Town Committees in Meriden and in other places, only serving to disband would be activism by sowing discord, confusion and outright fear and mistaken belief that it is illegal for minor parties to have town committees, seriously impeding the exercise of the right to associate for political purposes in a way major parties are not.
- b. The Petitioning Laws require, for each individual office for which ballot access has not been obtained, from Governor down to each and every municipal inland wetlands committee, individual petition applications, nomination letters, placeholder candidates to start the ballot drive when there is no present nominee by the Libertarian Party, ballot drive, signature validation and recordkeeping – all in addition to seperate SEEC requirements, seriously

impeding the exercise of the right to associate for political purposes in a way major parties are not.

c. The paper requirements of the Petitioning Laws are arcane and outdated in that not only can eligible citizens register as electors, but also in that: (1) the petitioning form cannot be completed similarly online; (2) the petitioning requirements seek what the public typically views as invasive and personal data; (3) the petitioning process requires double sided legal size paper that is unusual and cumbersome to all involved; (4) it imposes an arbitrary burden and cost on Town Clerks and even the Defendant's own personell; (5) it introduces unnecessary and costly delays into all steps of the electoral process for no productive end; and (6) only electors from one town can sign on one page, requiring circulators to carry numerous pages and several clipboards when collecting signatures at large events (such as fairs and other events).

d. The actual delay imposed on candidates and the Libertarian Party of Connecticut in navigating the Petitioning Laws and process delays, impedes and obstructs: (1) press coverage; (2) access to debates, as it did to the Party's Gubenatorial Race in 2018; and (3) fundraising – all because it is unknown until mid-September whether or not a candidate has qualified for the ballot.

e. It denies, based on the delay imposed by the law alone and the time frame, legal remedy for error. For example, 2008 Libertarian Nominee Bob Barr successfully proved that the State of Connecticut erroneously disqualified over 500 signatures in federal court (which would have been more than adequate to

put the Libertarian Party on the ballot, but on October 23, 2008, the District Court (Arterton, J) deemed the task of reprinting ballots at that point impossible.

f. The entirely arbitrary, useless process of ballot access and funding and organization necessary thereto in addition to the already cumbersome campaign finance burdens in other election law frameworks presents a permanent obstacle, the type and kind of which would have strangled the Democratic and Republican Parties in their infancies had such statutory frameworks existed during their origins. The Petitioning Laws are an ongoing civil rights violation that treats everyone but Democratic and Republican candidates in a grossly unfair manner designed to monopolize the levers of political power and enshrine their permanent status no matter their effectiveness or acts in office.

g. The Petitioning Laws have presented such a monumental barrier that compliance with them has become the number one expenditure to a degree that has diverted resources from advertising, training, marketing and other activities the Democratic and Republican Parties enjoy because their initial growth was unburdened by such laws.

h. The Petitioning Laws in Connecticut are uncommonly burdensome and wasteful of the resources of Minor Parties, Town Clerks and Registrars of Voters to that of most of the States United States, which assume the signatures collected to be valid and only permit a challenge to a ballot drive when a private

party with standing provides the resources to fund a challenge. The Petitioning Laws assume the signatures on petitions to be invalid until proven valid. This is so excessively impractical so as to stunt the growth of any new or minor political party and prevent any meaningful alternative to the Democratic or Republican Parties from arising.

i. The Petitioning Laws are even more grossly unfair to candidates who run without the endorsement of a Major or Minor Party, requiring that, even after they have won an election for a particular office, they are required to petition their way onto the ballot if they wish to run without the endorsement of a political party.

j. Despite having won a sufficient number of votes in statewide elections to be a minor party with enrollment privileges, the Defendant still requires, under §9-453b for some districts in which the Plaintiff Libertarian Party of Connecticut has not run a candidate before, "a reservation of such party designation", which involves a separate petition of 25 signatures from electors in order to actually get the petition to get on the ballot. It is a petition to get a petition.

k. The cumbersome nature of the Petitioning Laws is easily shown and demonstrated by numerous examples of their impracticality. For one example of many Robert Lombardo was the nominee for United States Congress in the Fifth Congressional District, and he, with other Libertarians, arrived the day of the deadline in 2012 to turn in his many hundreds of pages of signatures at approximately 3:30PM, then directed to go out to the lobby in the Secretary of

State's office to count the number of pages being submitted. He did, and by the time he reentered the office, the stamp machine used by the Secretary of State's designee made a clicking sound, indicating that the official time was 4:01PM that day, and therefore none of his signatures would be counted toward placing him on the ballot. In order to obtain Congressional ballot access, each district requires three to six thousand raw, unverified signatures in order to hit the target, which is why the Libertarian Party only has ballot access in the Second Congressional District (which it has maintained since successfully petitioning to get it in 2012).

I. Petitioning for state representative and state senate districts (in a way similar to Congressional Districts) adds additional confusion where an elector is reasonably confused, as most districts divide towns. For example, Norwich and Manchester each include three state house districts. Plainfield not only includes two state representative districts – it includes two state senate districts. Glastonbury is in both the First and Second Congressional District. Middletown is in the First and the Third Congressional District. To accurately collect signatures, this has frequently required a map to determine which petition an elector can actually sign.

10. The Libertarian Party and other minor parties are afforded disparate treatment vis-a-vis the Republican and Democratic Parties in that:

a. Even when they exceed 1% of the vote for a statewide office, they must

continue to run and petition to keep and maintain ballot access for each and every individual office, whereas the Republican and Democratic Parties do not have to run candidates for each and every office, and frequently choose not to.

b. Were the requirements of the Petitioning Laws imposed on the Democratic and Republican Parties, piecemeal as they are the Libertarian Party, they would drastically diminish or outright cease to function as organizations due to the overhead costs staying on top of the tasks the Libertarian Party of Connecticut must undertake as specified in ¶¶9a through f of this Count for each and every office. Moreover, Democratic and Republican lawmakers wrote, ratified and approved the Petitioning Laws from a position of strategic advantage, and to such a degree that no competition could equally and fairly emerge without substantial burden and oppression.

11. The entire framework of the Petitioning Laws, in the ways complained of, does not provide a feasible opportunity for new political organizations and their candidates to appear on the ballot long term, and thus fails to comply with basic protections under the First and Fourteenth Amendments to the Constitution of the United States.

12. The entire framework of the Petitioning Laws, in the ways complained of, violate Article 1, §2 of the Connecticut constitution by overtly curtailing and denying the people their "...undeniable and indefeasible right to alter their form of government in such manner as they may think expedient...", by enshrining the Democratic and Republican Parties, which are private organizations, in a permanent place of official

and institutional power. Said institutions, in turn, utilize public resources, infrastructure and forms to conduct party business in the form of primaries, a benefit no minor party has or would ever have any foreseeable hope of obtaining under the framework of the Petitioning Laws.

13. The Petitioning Laws curtail and restrain the liberty of speech in violation of Connecticut Constitution Article I, §5 as complained of herein. They further violate Connecticut Constitution Article 1 §14 by curtailing, burdening and at many times outright denying the exercise of the right of the Plaintiffs to "in a peaceable manner, to assemble for their common good; and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address or remonstrance.", as complained of herein.

14. The Petitioning Laws, taken as a whole, are invidiously discriminatory and violate the Equal Protection Clause because they give the two old, established parties a decided advantage over new parties. The state laws here involved heavily burden the right of individuals to associate for the advancement of political beliefs and the right of qualified voters to cast their votes effectively, and they arbitrarily, capriciously and unconstitutionally deny the Plaintiffs the equality of opportunity to which they are entitled by overtly slanting the outcome in favor of Democratic and Republican candidates because the laws stunt the growth and overburden the resources of new and minor parties to a degree where no fair contest can be had between them and the Democratic and Republican Parties in a General November Election.

15. The Petitioning Laws, repeatedly, and for every office, require the same task

of demonstrating a modicum of support sufficient to warrant statewide ballot access, yet require Petitions to be pulled for lower offices throughout the state, which only serves to repeat and duplicate tasks and efforts for no legitimate state purpose.

16. The United States Supreme Court has held, that such a framework "...favors two particular parties the Republicans and the Democrat -- and, in effect, tends to give them a complete monopoly. There is, of course, no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms. New parties struggling for their place must have the time and opportunity to organize in order to meet reasonable requirements for ballot position, just as the old parties have had in the past." *Williams v Rhodes*, 393 US 32 (1968). While the Defendant forces all minor parties to hawk paper signatures on legal sized, double sided individual petitions for each office and for each town, the Defendant publishes forms that frontload Democratic and Republican Party membership by allowing people to check a box on paper or online, discouraging enrollment in any minor party, and requiring the name of any such party to be written in under "other".

WHEREFORE, the Plaintiffs claim:

A. Declaratory relief under 42 USC §1983 that the Libertarian Party, by virtue of being an established minor party and having routinely secured more than 1% of the vote in statewide elections, should not have to collect any additional signatures or petition for any individual office, and should and is otherwise constitutionally entitled to

associate with and nominate its candidates for public office.

B. Injunctive relief under 42 USC §1983 that the Petitioning Laws not be used to further prevent the Plaintiffs from ballot access so long as they obtain at least 1% of the vote in a statewide race every evenly numbered year.

C. Declaratory relief under 42 USC §1983 that requiring and restricting the Petitioning process to paper only is arbitrary, in light of the fact that the Defendant accepts and allows electors to register to vote online.

D. Damages

E. Costs and Attorney Fees

F. Other relief the Court deems proper

COUNT FOUR: DEPRIVATION OF RIGHTS UNDER COLOR OF LAW, 42 USC §1983 (PLAINTIFF LIBERTARIAN PARTY VS DEFENDANT DENISE MERRIL, FOR UNEQUAL TREATMENT UNDER THE LAW)

1. The Defendant is the chief elections officer in this State and charged with enforcing an ensuring compliance with Election Law. Such duties include prescribing forms for which eligible persons may register to vote pursuant to CGS §§ 9-20 and 9-23g(b) "Forms", which allow eligible persons to register in person, by mail or online.

2. The Forms, outside of any statutorily authorized language, specifically ask electors whether they would like to enroll in a political party, and then list their options as "Democratic", "Republican" and "Other", the last one requiring the enrolling elector to write in the "other" party name. This results in disparate treatment unfair to the Plaintiff and its members, impeding their right to associate and enjoy enrollment

privileges even though the Plaintiff is a recognized Minor Party, and has continued to be so for decades with the right to enroll members via voter registration.

3. The Forms actively encourage and promote new voters to enroll in only the Democratic or Republican parties; and there is no legitimate State interest in the Defendant continuing to publish or require the use of such forms that promote two political parties over any other.

4. There is no compelling state interest in the Defendant having issued or relying on the use of such Forms frontloading the names of the established Democratic or Republican parties without naming any of the other alternatives.

5. Nowhere in statute is the Defendant actually required to list any specific names of any political party. Nowhere can the Defendant actually show that there is a compelling state interest in listing any specific names of any political party on a voter registration form.

WHEREFORE, the Plaintiff seeks

A. Declaratory relief under 42 USC §1983 that said Forms are unconstitutionally discriminatory in the ways complained of;

B. Injunctive relief against the Defendant from continuing to promote either the Democratic or Republican parties by use of such forms, or any form that prints the name of any party on them;

C. Costs and Attorney Fees;

D. Damages

E. Other relief the Court deems proper

VERIFICATION

I, Daniel Reale, Chair of the Libertarian Party of Connecticut, certify that the foregoing allegations are true to the best of my knowledge and belief this ___ Day of October, 2019:

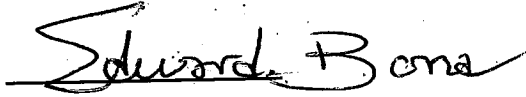

Daniel Reale
Chair, Libertarian Party of Connecticut

STATE OF CONNECTICUT

s.s. Plainfield

COUNTY OF WINDHAM

Daniel Reale, known to me and having satisfactorily identified himself, made oath, as to the foregoing, before me, this ^{3rd} ___ Day of October, 2019



Edward Bona

Commissioner of the Superior Court, Juris No. 411570

FOR THE PLAINTIFFS,
ROGER MISBACH
ELLEN MISBACH
LIBERTARIAN PARTY OF CONNECTICUT

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